IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/12/2004

Coram

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.25962 of 2004

Dunlop Factory Employees Union,
Regd. No.3030, 512, M.T.H. Road,
Ambattur, Chennai-53, rep. by its
General Secretary R. Dharanikumar. .. Petitioner

-Vs-

1. Dunlop India Ltd.,
M.T.H. Road, Ambattur,
Chennai-53, rep. by its
Managing Director S.K. Kothari.

2. The Appellate Authority for
Industrial & Financial Reconstruction,
10th Floor, "Jeevan Parakas",
25, Kasthuribai Gandhi Marg,
New Delhi-110 001.

3. The Board of Industrial and
Financial Re-construction,
Sawanar Vyapar Bhawan,
1, Tolstoy Marg, New Delhi.

4. Government of Tamil Nadu,
rep. by its Secretary,
Labour Department,
Fort St. George, Chennai-9.

5. Commissioner of Labour,
D.M.S. Campus, Teynampet,
Chennai-18.

6. V.N. Devadoss .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Declaration, thereby declaring the sale of Dunlop land at Ambattur on 17.6.2004 by the first respondent in favour of the sixth respondent as null and void.

!For Petitioner : Mr. M. Jayaraman

For Respondents : Mr. G. Masilamani,
Senior Counsel for
M/s. King & Patridge (R-1)

Mr. R. Krishnamurthy,
Senior Counsel for
Mr. A. Venkatesah (R-6)

:O R D E R

The writ petitioner is the Workers' Union which seeks for a declaration that the sale deed executed by the first respondent in favour of the sixth respondent is null and void. The first respondent company went into financial difficulties and therefore, a reference was made to the Board of Industrial and Financia l Re-construction ('BIFR' in short) for framing a scheme. Originally, the Industrial Development Bank of India (IDBI) was appointed as the operating agency and thereafter, it was replaced by the State Bank of India. During the course of the proceedings, the petitioners also took part. It was decided that it was necessary to sell some of the immovable properties belonging to the first respondent in order to facilitate rehabilitation. The first respondent owns properties all over India. The manner in which such sale should take place was also laid down. As against the order of the BIFR, an appeal was filed before the Appellate Authority for Industrial and Financial Re-construction ('AAIFR' in short). On 17 .6.2004, the property was sold to the sixth respondent. It is this sale deed executed in favour of the sixth respondent that is assailed in this writ petition.

2. Learned counsel for the petitioners Mr. M. Jayaraman would submit that though the scheme framed provides for rehabilitation of the factory by selling the property at Ambattur, the first respondent has made the re-commencement of the factory impossible. According to the learned counsel for the petitioners, wells are essential for manufacture of tyres, which is the business activity that the respondent engages in. The property that has been sold to the sixth respondent contains active wells belonging to the first respondent and therefore, it will not be possible to start the factory without the wells. It is next submitted that though guidelines were framed for the sale of properties at Mumbai, Calcutta, Chennai, Goa, etc., the property at Ambattur was not referred to in the order either of the BIFR or the AAIFR. Thirdly, it was submitted that the order dated 17.5.2002 would show that prior permission from the Government was necessary for the sale of the property and on this ground also, the sale should be declared as void. Learned counsel also pointed out the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (SICA) and would submit that after the date of repeal of the original Act, all proceedings stand abated.

3. Learned senior counsel Mr. G. Masilamani appearing on behalf of the first respondent would submit that the workers of the petitioner Union have no locus standi to attack the sale deed, much less ask for an injunction. According to the learned senior counsel, the Repeal Act has a saving clause which saves all actions legitimately taken during the period when the Act was in force and in any event, the AAIFR had passed final orders directing the

Asset Sales Committee (ASC) to go on with the sale and therefore, the repeal of the Act would hardly affect the consequences flowing from the order passed by the AAIFR. Learned senior counsel would submit that the Asset Sales Committee comprises of responsible officials, viz., Nominees of Banks, Debenture Holders, BIFR, etc. and therefore, it is highly unlikely that they would venture into a sale without complying with all the formalities. There are no allegations in the writ affidavit that the property has been undervalued. According to the learned senior counsel, there are 21 wells and two borewells in the property belonging to the first respondent and the portion of land sold to the sixth respondent contained 9 wells and one borewell, while 12 wells and one borewell still remain with the first respondent. Out of the 9 wells, only 4 are usable wells and therefore, the sale of that portion of factory property which contained those 9 wells will not in any way affect the rehabilitation process of the first respondent company.

4. The learned senior counsel Mr. R. Krishnamurthy appearing on behalf of the sixth respondent would submit that while granting injunction, the question of balance of convenience prima facie causing irreparable injury should also be considered. It is relevant to note here that the purchaser, viz. the sixth respondent had filed O.S. No.430 of 2004 for a permanent injunction and interim injunction was ordered. The petitioner Union was a party to the said suit, having entered appearance and the interim injunction application is still pending. While so, the petitioners, without referring to the pendency of the civil suit, had filed this writ petition. Learned senior counsel would further submit that the sixth respondent had bona fide believed that AAIFR had permitted the sale and had no reason to believe otherwise. According to the learned senior counsel, the sixth respondent had purchased

the property at a very heavy cost and the injunction would cause hardship. It was also submitted that the petitioners cannot invoke Article 226 of the Constitution for the relief sought for.

5. It is doubtful whether the petitioners can seek a relief of a mere declaration that a sale deed is void without seeking any further relief. If the petitioners wanted to assail the sale deed, their remedy was before the civil court. The frame of the prayer itself shows that what is attacked is not the decision of the AAIFR to order sale but the sale itself. The pleadings and some of the materials on record may be referred to.

6. There is no dispute that the first respondent company was under financial difficulties and in order to revive the company, the rehabilitation scheme was prepared. The first Draft Rehabilitation Scheme called DRS-I was by the BIFR. The BIFR gave certain directions. The first respondent filed an appeal and the AAIFR prepared another scheme which is called DRS-II. The petitioners themselves admit that the AAIFR called for the consent/comments in response to DRS-II from the banks, Debenture Holders LIC, etc. and the workers of Dunlop India Limited. AAIFR made it clear that if no consent or comments are received by 31.7.2002, consent to the scheme shall be deemed to have been given under Section 19(2) of the SICA. This is found in

paragraph 9 of the affidavit filed in support of the writ petition. The main objection seems to be, as seen from paragraph 12 of the affidavit, which states, "Apart from this, the sale itself is detrimental to the Ambattur unit, because the wells which supply the major portion of water required for the factory have been sold".

7. The petitioners also raised issues regarding the settlement under Section 12(3) of the Industrial Disputes Act, 1947. That was the subject matter of another writ petition, viz., W.P. No.25963 of 2004, filed simultaneously along with the present writ petition. It is admitted by the counsel present that this writ petition was dismissed, directing the petitioners to seek their relief before the Labour Court. The petitioners have also stated in paragraph 13 of the affidavit that the Management, which is a declared sick unit and which is under the process of rehabilitation, has no right to alienate its properties and hence, the sale is .... "ab initio void and illegal".

8. The Draft Scheme prepared by the AAIFR, to which the petitioners were parties, issued directions under Clause 3.3(f) to the Asset Sales Committee for the sale of the petitioners' assets at Mumbai, Chennai and Bangalore and for identification/valuation of other assets to be brought up for sale. The petitioners knew about this and therefore, it is too late for them to say that the immovable properties cannot be sold during the rehabilitation process. In fact, it is seen from DRS-II that as part of the rehabilitation scheme, some of the assets of the company have been sold. Clause 3.4 of the Scheme refers to reliefs and concessions and these reliefs are grouped under several headings, viz., Banks, Debenture Holders, Government of West Bengal, Government of Tamil Nadu, etc. Clause D(v) under the reliefs and concessions to Government of Tamil Nadu reads, "GOTN to permit disposal/ development of land/building at Ambattur". The petitioners claim that this permission is a pre-condition for the sale and if the sale deed had been executed without obtaining permission, it is void. Clause 3 .6 of the Scheme refers to monitoring, and the AAIFR had directed that the progress of implementation of the Scheme will be monitored by the BIFR with the assistance of IDBI and that the BIFR would be free to exercise all their powers under SICA without being constrained by the fact that the Scheme has been sanctioned by AAIFR.

9. The order passed by the BIFR on 28.3.2001 refers to the manner in which the final acceptance of the bids should be made and that is only with the prior approval of the BIFR. On 25.2.2003, the AAIFR had passed an order in which it is stated as follows :-

"As a step towards rehabilitation of the appellant company, efforts have been made by the BIFR for sale of surplus assets to finance rehabilitation scheme of the appellant company.

As the sale of the assets is the primary input to meet the cost of the scheme, it is necessary that these and other surplus properties should be disposed of expeditiously.

We authorize the ASC to fix the reserve price of the aforesaid 8 properties after taking into consideration the relevant factors and circumstances and take steps for disposal of these properties. The ASC is

authorized to accept the bids and complete the sales. If there is any other property which is to be sold the same shall also be disposed of by the ASC in the same manner as other properties are being disposed of by following the same procedure for sale of such other properties."

On 7.3.2003, the AAIFR passed another order where again the authorization given to the Asset Sales Committee for accepting bids is reiterated.

10. On 27.1.2004, the petitioners have written a letter to the Commissioner of Labour. Even in this letter, the only grievance of the petitioners appears to be the application of the sale proceeds for paying off the entire amount to debenture holders. There is no reference to the directions given by the AAIFR for exploring the sale of other properties, including the property at Ambattur. On 7.7.2004, the first respondent had written a letter to the petitioners stating that the Asset Sales Committee constituted on the directions of the BIFR had decided to sell the Company's surplus land at Ambattur and approximately 61 acres of land have been sold and it specifically mentions -
"Kindly note that necessary steps have been taken to ensure that sufficient water is available from the existing/new wells at Athipet Village to ensure that the operations of the factory can be carried out uninterrupted."

On 7.7.2004, the petitioners have given a complaint to the police that attempt is being made to encroach into wells that are necessary for the functioning of the factory without the knowledge of the Union and the Management -

(Vernacular Portion deleted)

On 12.7.2004, the first respondent has requested the petitioner Union to co-operate for the early restart of the factory and by letter dated 13.7.2004, the first respondent had intimated the petitioners that during the conciliation meeting held at the office of the Joint Labour Commissioner, the Executive Director had communicated to all the Union Members that the Asset Sales Committee was in the process of selling surplus assets of the Company.

11. The petitioners are unable to point out any irregularity vitiating the sale. The petitioners have not challenged the process by which a decision was arrived at by the authorities under SICA to sell the property. That decision was arrived at in 2002. They knew about it. In 2004, after due publicity, the property is sold and it is just like any other sale. The vendor is the first respondent and the purchaser is the sixth respondent. The declaration that is sought for in respect of this sale deed cannot be granted in a writ petition. No infringement of any right of the petitioners is shown.

12. The one factual objection regarding the wells, has been met by the respondents stating that there are sufficient number of wells in the lands retained by the first respondent and if necessary, more wells could be dug.

13. All the other objections regarding prior permission are really

not the concern of the petitioners. If those are factors which vitiate the sale, it is the respondents who will suffer, having purchased a property without the required sanction. It was submitted on behalf of the first respondent that with the funds realized by the sale, many of the secured creditors/debenture holders have been paid off and the first respondent is recovering from the sickness. It is not necessary to go into that aspect at all. It is difficult to understand what exactly the grievance of the petitioner is. When the question was put to the learned counsel for the petitioners whether they have any basic objection to this sale, the answer was in the negative. It was submitted that the petitioners want the sale to be proper and in accordance with the order of the AAIFR. When it is clear from the extracts of the order of the AAIFR that they had delegated the decision as to the manner in which and the price at which the sale has to be conducted to the Asset Sales Committee and when the sale has taken place as per the directions of the Asset Sales Committee, the petitioners can have no grievance.

14. The learned counsel for the petitioners also raised an issue that the sale deed does not refer to the various proceedings subject to which alone the sale could have been made and in particular, there is no reference to the wells which formed part of the sale. If there is any cloud in the title that the six respondent claims as having passed on to him, it is for the sixth respondent to feel aggrieved and if there is any under-valuation, there are authorities to take care of the same.

15. Objections were raised regarding insufficient publicity for the sale of the property. To counter this, the sixth respondent has produced the advertisements made on 19.4.2004 in "Business Standard" and "Daily Thanthi". The observations in the order of the AAIFR dated 25 .2.2002 were pointed out by the learned counsel for the respondents where the AAIFR had refused to approve the reserve price in respect of the Pune and Goa properties and it was submitted that there is nothing to show that such an exercise was undertaken with regard to the sale of Ambattur property. But, in the same order, the AAIFR had authorized the Asset Sales Committee to fix the reserve price and to take steps for disposal of not only those properties which have been mentioned aforesaid, but also other properties as is clear from the phrase, "if there is any other property" in the said paragraph.

16. The other point raised was that on the date of the sale, the SICA had been repealed and hence, the proceedings pending before the appellate authority or the Board would abate and therefore, the sale could not have taken place. The Repeal Act (Central Act 1 of 2004) came into force on 2.1.2004 and Section 5 thereof provides that the repeal of the Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, etc. In this case, before the Act was repealed, the appellate authority had finally passed the order, totally authorizing the Asset Sales Committee to complete the procedure for the sale of the properties mentioned therein and any other such property. Therefore, if the Asset Sales Committee proceeded to sell the property in accordance with those directives, such actions stand saved by the provisions of Section 5 of the Repeal Act.

17. Further, the prayer in the writ petition is one for which the remedy is before the civil forum and a declaration such as the one sought for cannot be granted in a writ petition.

18. As stated earlier, the petitioners have not pointed out any infirmity in the sale. The petitioners are also not able to show how they are aggrieved by the sale, especially when the extract from the documents filed in the typed set of papers show that the sale itself was made only to enable the restart of the Company which will be to the advantage of the workers. It is also stated that the first respondent has paid some amounts to the workers from out of the proceeds obtained from the sale. The petitioners have not mentioned about the pendency of the suit when they filed the writ petition. They had all along been party to the entire rehabilitation proceedings which culminated in the decision to sell the surplus property, which included the property at Ambattur. If the petitioners were aggrieved, they ought to have attacked the Scheme in the year 2002. Even if the sale deed is vitiated by some procedural irregular ity or illegality, the party who would suffer would be the purchaser and not the workers.

19. For all these reasons, the writ petition is liable to be dismissed and is accordingly dismissed. No costs. Consequently, W.P.M.P. No.31543 of 2004 and W.V.M.P. No.2000 of 2004 are closed.

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Index : Yes
Internet : Yes

To

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